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HOUSE BILL 1275

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DAVID M PARSONS

AN ACT

RELATING TO MINORS; PROVIDING FOR LOSS OF CERTAIN PRIVILEGES
UPON WITHDRAWAL FROM SCHOOL PRIOR TO GRADUATION; AMENDING AND
ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] Any person under the age of
eighteen who is not in compliance with the attendance
requirements of the Compulsory School Attendance Law shall not
be included in the calculation of any other person's state or
federal public assistance, including food stamps, supplemental
security income, temporary assistance for needy families or
medicaid.

Section 2. A new section of the Compulsory School
Attendance Law is enacted to read:

"[NEW MATERIAL] DOCUMENTATION OF SCHOOL ATTENDANCE. --

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1 A. As used in this section, "withdraws from school"
2 means having more than ten consecutive or fifteen days total
3 unexcused absences during a single semester, including unexcused
4 absences due to suspension or expulsion.

5 B. The certified school administrator of a public
6 school or the chief administrator of a private or home school
7 shall provide upon request documentation of enrollment and
8 attendance status on a form approved by the motor vehicle
9 division of the taxation and revenue department to any student
10 under the age of eighteen who is properly enrolled for
11 presentation to the division on application for issuance or
12 reinstatement of an instruction permit or license to operate a
13 motor vehicle.

14 C. Whenever a student under the age of eighteen
15 withdraws from school, except as provided in Subsection A of
16 Section 22-12-2 NMSA 1978, the certified school administrator or
17 the chief administrator of the private or home school shall
18 notify the motor vehicle division of the taxation and revenue
19 department of the student's withdrawal from school. "

20 Section 3. Section 51-1-5 NMSA 1978 (being Laws 1969,
21 Chapter 213, Section 2, as amended) is amended to read:

22 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS. --

23 A. An unemployed individual shall be eligible to
24 receive benefits with respect to any week only if he:

25 (1) has made a claim for benefits with respect

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1 to such week in accordance with such regulations as the
2 secretary may prescribe;

3 (2) has registered for work at, and thereafter
4 continued to report at, an employment office in accordance with
5 such regulations as the secretary may prescribe, except that the
6 secretary may, by regulation, waive or alter either or both of
7 the requirements of this paragraph as to individuals attached to
8 regular jobs and as to such other types of cases or situations
9 with respect to which he finds that compliance with such
10 requirements would be oppressive or would be inconsistent with
11 the purposes of the Unemployment Compensation Law. No such
12 regulation shall conflict with Subsection A of Section 51-1-4
13 NMSA 1978;

14 (3) is able to work and is available for work
15 and is actively seeking permanent and substantially full-time
16 work in accordance with the terms, conditions and hours common
17 in the occupation or business in which the individual is seeking
18 work, except that the secretary may, by regulation, waive this
19 requirement for individuals who are on temporary layoff status
20 from their regular employment with an assurance from their
21 employers that the layoff shall not exceed four weeks or who
22 have an express offer in writing of substantially full-time work
23 that will begin within a period not exceeding four weeks;

24 (4) has been unemployed for a waiting period of
25 one week. No week shall be counted as a week of unemployment

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1 for the purposes of this paragraph:

2 (a) unless it occurs within the benefit
3 year that includes the week with respect to which he claims
4 payment of benefits;

5 (b) if benefits have been paid with
6 respect thereto; and

7 (c) unless the individual was eligible
8 for benefits with respect thereto as provided in this section
9 and Section 51-1-7 NMSA 1978, except for the requirements of
10 this subsection and of Subsection E of Section 51-1-7 NMSA 1978;

11 (5) has, during his base period, been paid
12 wages for insured work totaling not less than one and one-fourth
13 his high-quarter wages;

14 (6) has reported to an office of the division
15 in accordance with the regulations of the secretary for the
16 purpose of an examination and review of the individual's
17 availability for and search for work, for employment counseling,
18 referral and placement and for participation in a job finding or
19 employability training and development program. No individual
20 shall be denied benefits under this section for any week that he
21 is participating in a job finding or employability training and
22 development program; and

23 (7) participates in reemployment services, such
24 as job search assistance services, if the division determines
25 that the individual is likely to exhaust regular benefits and

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1 need reemployment services pursuant to a profiling system
2 established by the division, unless the division determines
3 that:

4 (a) the individual has completed such
5 services; or

6 (b) there is justifiable cause for the
7 individual's failure to participate in the services.

8 B. A benefit year as provided in Section 51-1-4 NMSA
9 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
10 established; provided no individual may receive benefits in a
11 benefit year unless, subsequent to the beginning of the
12 immediately preceding benefit year during which he received
13 benefits, he performed service in "employment", as defined in
14 Subsection F of Section 51-1-42 NMSA 1978, and earned
15 remuneration for such service in an amount equal to the lesser
16 of three-thirteenths of the individual's high-quarter wages and
17 six times his weekly benefit amount.

18 C. Benefits based on service in employment defined
19 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
20 51-1-43 NMSA 1978 are to be paid in the same amount, on the same
21 terms and subject to the same conditions as compensation payable
22 on the basis of other services subject to the Unemployment
23 Compensation Law except that:

24 (1) benefits based on services performed in an
25 instructional, research or principal administrative capacity for

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1 an educational institution shall not be paid for any week of
2 unemployment commencing during the period between two successive
3 academic years or terms or, when an agreement provides for a
4 similar period between two regular but not successive terms,
5 during such period or during a period of paid sabbatical leave
6 provided for in the individual's contract, to any individual if
7 such individual performs such services in the first of such
8 academic years or terms and if there is a contract or a
9 reasonable assurance that such individual will perform services
10 in any such capacity for any educational institution in the
11 second of such academic years or terms;

12 (2) benefits based on services performed for an
13 educational institution other than in an instructional, research
14 or principal administrative capacity shall not be paid for any
15 week of unemployment commencing during a period between two
16 successive academic years or terms if such services are
17 performed in the first of such academic years or terms and there
18 is a reasonable assurance that such individual will perform
19 services for any educational institution in the second of such
20 academic years or terms. If compensation is denied to any
21 individual under this paragraph and the individual was not
22 offered an opportunity to perform such services for the
23 educational institution for the second of such academic years or
24 terms, the individual shall be entitled to a retroactive payment
25 of benefits for each week for which the individual filed a claim

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1 and certified for benefits in accordance with the regulations of
2 the division and for which benefits were denied solely by reason
3 of this paragraph;

4 (3) benefits shall be denied to any individual
5 for any week that commences during an established and customary
6 vacation period or holiday recess if such individual performs
7 any services described in Paragraphs (1) and (2) of this
8 subsection in the period immediately before such period of
9 vacation or holiday recess and there is a reasonable assurance
10 that such individual will perform any such services in the
11 period immediately following such vacation period or holiday
12 recess;

13 (4) benefits shall not be payable on the basis
14 of services specified in Paragraphs (1) and (2) of this
15 subsection during the periods specified in Paragraphs (1), (2)
16 and (3) of this subsection to any individual who performed such
17 services in or to or on behalf of an educational institution
18 while in the employ of a state or local governmental educational
19 service agency or other governmental entity or nonprofit
20 organization; and

21 (5) for the purpose of this subsection, to the
22 extent permitted by federal law, "reasonable assurance" means a
23 reasonable expectation of employment in a similar capacity in
24 the second of such academic years or terms based upon a
25 consideration of all relevant factors, including the historical

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1 pattern of reemployment in such capacity, a reasonable
2 anticipation that such employment will be available and a
3 reasonable notice or understanding that the individual will be
4 eligible for and offered employment in a similar capacity.

5 D. Paragraphs (1), (2), (3), (4) and (5) of
6 Subsection C of this section shall apply to services performed
7 for all educational institutions, public or private, for profit
8 or nonprofit, which are operated in this state or subject to an
9 agreement for coverage under the Unemployment Compensation Law
10 of this state, unless otherwise exempt by law.

11 E. Notwithstanding any other provisions of this
12 section or Section 51-1-7 NMSA 1978, no otherwise eligible
13 individual is to be denied benefits for any week because he is
14 in training with the approval of the division nor is such
15 individual to be denied benefits by reason of application of
16 provisions in Paragraph (3) of Subsection A of this section or
17 Subsection C of Section 51-1-7 NMSA 1978 with respect to any
18 week in which he is in training with the approval of the
19 division. The secretary shall provide, by regulation, standards
20 for approved training and the conditions for approving such
21 training for claimants, including any training approved or
22 authorized for approval pursuant to Section 236(a)(1) and (2) of
23 the Trade Act of 1974, as amended, or required to be approved as
24 a condition for certification of the state's Unemployment
25 Compensation Law by the United States secretary of labor.

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1 F. Notwithstanding any other provisions of this
2 section, benefits shall not be payable on the basis of services
3 performed by an alien unless such alien is an individual who was
4 lawfully admitted for permanent residence at the time such
5 services were performed, was lawfully present for the purposes
6 of performing such services or was permanently residing in the
7 United States under color of law at the time such services were
8 performed, including an alien who was lawfully present in the
9 United States as a result of the application of the provisions
10 of Section 212(d)(5) of the Immigration and Nationality Act;
11 provided that:

12 (1) any information required of individuals
13 applying for benefits to determine their eligibility for
14 benefits under this subsection shall be uniformly required from
15 all applicants for benefits; and

16 (2) no individual shall be denied benefits
17 because of his alien status except upon a preponderance of the
18 evidence.

19 G. Notwithstanding any other provision of this
20 section, benefits shall not be paid to any individual on the
21 basis of any services substantially all of which consist of
22 participating in sports or athletic events or training or
23 preparing to so participate for any week that commences during
24 the period between two successive sport seasons, or similar
25 periods, if such individual performed such services in the first

1 of such seasons, or similar periods, and there is a reasonable
2 assurance that such individual will perform such services in the
3 latter of such seasons or similar periods.

4 H. Students who are enrolled in a full-time course
5 schedule in an educational or training institution or program,
6 other than those persons in an approved vocational training
7 program in accordance with Subsection E of this section, shall
8 not be eligible for unemployment benefits except as provided by
9 regulations promulgated by the secretary.

10 I. As used in this subsection, "seasonal ski
11 employee" means an employee who has not worked for a ski area
12 operator for more than six consecutive months of the previous
13 twelve months or nine of the previous twelve months. Any
14 employee of a ski area operator who has worked for a ski area
15 operator for six consecutive months of the previous twelve
16 months or nine of the previous twelve months shall not be
17 considered a seasonal ski employee. The following benefit
18 eligibility conditions apply to a seasonal ski employee:

19 (1) except as provided in Paragraphs (2) and
20 (3) of this subsection, a seasonal ski employee employed by a
21 ski area operator on a regular seasonal basis shall be
22 ineligible for a week of unemployment benefits that commences
23 during a period between two successive ski seasons unless such
24 individual establishes to the satisfaction of the secretary that
25 he is available for and is making an active search for permanent

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1 full-time work;

2 (2) a seasonal ski employee who has been
3 employed by a ski area operator during two successive ski
4 seasons shall be presumed to be unavailable for permanent new
5 work during a period after the second successive ski season that
6 he was employed as a seasonal ski employee; and

7 (3) the presumption described in Paragraph (2)
8 of this subsection shall not arise as to any seasonal ski
9 employee who has been employed by the same ski area operator
10 during two successive ski seasons and has resided continuously
11 for at least twelve successive months and continues to reside in
12 the county in which the ski area facility is located.

13 J. Notwithstanding any other provision of this
14 section, an otherwise eligible individual shall not be denied
15 benefits for any week by reason of the application of Paragraph
16 (3) of Subsection A of this section because he is before any
17 court of the United States or any state pursuant to a lawfully
18 issued summons to appear for jury duty.

19 K. Benefits shall not be paid to any individual
20 under eighteen years of age unless he is a graduate of a
21 secondary school or has obtained a general education development
22 certificate."

23 Section 4. Section 66-5-5 NMSA 1978 (being Laws 1978,
24 Chapter 35, Section 227, as amended) is amended to read:

25 "66-5-5. PERSONS NOT TO BE LICENSED. --The division shall

1 not issue a driver's license under the Motor Vehicle Code to any
2 person:

3 A. who is under the age of sixteen years, except the
4 division may, in its discretion, issue:

5 (1) a restricted instruction permit or a
6 restricted license to students fourteen years of age or over,
7 enrolled in and attending a driver-education course that
8 includes a DWI education and prevention component approved by
9 the bureau or offered by a public school;

10 (2) a license to any person fifteen years of
11 age or older who has satisfactorily completed a driver-education
12 course that is approved by the bureau or offered by a public
13 school and that includes both a DWI education and prevention
14 component and practice driving; and

15 (3) to any person thirteen years of age or
16 older who passes an examination prescribed by the division, a
17 license restricted to the operation of a motorcycle, provided:

18 (a) the motor is not in excess of one
19 hundred cubic centimeters displacement;

20 (b) no holder of an initial license may
21 carry any other passenger while driving a motorcycle; and

22 (c) the director approves and certifies
23 motorcycles as not in excess of one hundred cubic centimeters
24 displacement and by regulation provides for a method of
25 identification of such motorcycles by all law enforcement

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1 officers;

2 B. whose license or driving privilege has been
3 suspended or denied, during the period of suspension or denial,
4 or to any person whose license has been revoked, except as
5 provided in Section 66-5-32 NMSA 1978;

6 C. who is an habitual drunkard, an habitual user of
7 narcotic drugs or an habitual user of any drug to a degree
8 [~~which~~] that renders him incapable of safely driving a motor
9 vehicle;

10 D. who, within any ten-year period, is three times
11 convicted of driving a motor vehicle while under the influence
12 of intoxicating liquor or narcotic drug regardless of whether
13 the convictions are under the laws or ordinances of this state
14 or any municipality or county of this state or under the laws or
15 ordinances of any other state, the District of Columbia or any
16 governmental subdivision thereof. Ten years after being so
17 convicted for the third time, the person may apply to any
18 district court of this state for restoration of the license, and
19 the court, upon good cause being shown, may order restoration of
20 the license applied for; provided that the person has not been
21 subsequently convicted of driving a motor vehicle while under
22 the influence of intoxicating liquor or drug in the ten-year
23 period prior to his request for restoration of his license.
24 Upon issuance of the order of restoration, a certified copy
25 shall immediately be forwarded to the division, and if the

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1 person is otherwise qualified for the license applied for, the
2 three previous convictions shall not prohibit issuance of the
3 license applied for. Should the person be subsequently once
4 convicted of driving a motor vehicle while under the influence
5 of intoxicating liquor or drug, the division shall revoke his
6 license for five years, after which time he may apply for
7 restoration of his license as provided in this subsection;

8 E. who has previously been afflicted with or who is
9 suffering from any mental disability or disease [~~which~~] that
10 would render him unable to drive a motor vehicle with safety
11 upon the highways and who has not, at the time of application,
12 been restored to health;

13 F. who is required by the Motor Vehicle Code to take
14 an examination, unless he has successfully passed the
15 examination;

16 G. who is required under the laws of this state to
17 deposit proof of financial responsibility and who has not
18 deposited the proof;

19 H. when the director has good cause to believe that
20 the operation of a motor vehicle on the highways by the person
21 would be inimical to public safety or welfare; [~~or~~]

22 I. as a motorcycle driver who is less than eighteen
23 years of age and who has not presented a certificate or other
24 evidence of having successfully completed a motorcycle driver-
25 education program licensed or offered in conformance with

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1 regulations of the bureau; or

2 J. who is under the age of eighteen and who does not
3 at the time of application present documentation acceptable to
4 the division that the person:

5 (1) has graduated from a secondary school of
6 this state or any other state;

7 (2) is enrolled in and regularly attending a
8 secondary school or home school of this state or any other
9 state;

10 (3) is enrolled in and making satisfactory
11 progress in a course leading to a general educational
12 development certificate or has obtained such certificate; or

13 (4) is excused from school pursuant to
14 Subsection A of Section 22-12-2 NMSA 1978. "

15 Section 5. Section 66-5-30 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 252, as amended) is amended to read:

17 "66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE
18 LICENSE. --

19 A. The division is authorized to suspend the license
20 of a driver without preliminary hearing upon a showing by its
21 records or other sufficient evidence that the licensee:

22 (1) has been convicted of an offense for which
23 mandatory revocation of license is required upon conviction;

24 (2) has been convicted as a driver in any
25 accident resulting in the death or personal injury of another or

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1 serious property damage;

2 (3) has been convicted with such frequency of
3 offenses against traffic laws or regulations governing motor
4 vehicles as to indicate a disrespect for traffic laws and a
5 disregard for the safety of other persons on the highways;

6 (4) is an habitually reckless or negligent
7 driver of a motor vehicle;

8 (5) is incompetent to drive a motor vehicle;

9 (6) has permitted an unlawful or fraudulent use
10 of the license;

11 (7) has been convicted of an offense in another
12 state which if committed in this state would be grounds for
13 suspension or revocation;

14 (8) has violated provisions stipulated by a
15 district court in limitation of certain driving privileges;

16 (9) has failed to fulfill a signed promise to
17 appear or notice to appear in court as evidenced by notice from
18 a court, whenever appearance is required by law or by the court
19 as a consequence of any charge or conviction under the Motor
20 Vehicle Code;

21 (10) has failed to pay a penalty assessment
22 within thirty days of the date of issuance; or

23 (11) has accumulated seven points, but less
24 than eleven points, and when the division has received a
25 recommendation from a municipal or magistrate judge that the

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1 ~~[Licensee]~~ license be suspended for a period not to exceed three
2 months.

3 B. Upon suspending the license of any person as
4 authorized in this section, the division shall immediately
5 notify the licensee in writing and upon his request shall afford
6 him an opportunity for a hearing as early as practicable within
7 not to exceed twenty days, not counting Saturdays, Sundays and
8 legal holidays, after receipt of the request in the county
9 wherein the licensee resides unless the division and the
10 licensee agree that the hearing may be held in some other
11 county; provided that the hearing request is received within
12 twenty days from the date that the suspension was deposited in
13 the United States mail. The director may, in his discretion,
14 extend the twenty-day period. Upon the hearing, the director or
15 his duly authorized agent may administer oaths and may issue
16 subpoenas for the attendance of witnesses and the production of
17 relevant books and papers and may require a reexamination of the
18 licensee. Upon the hearing, the division shall either rescind
19 its order of suspension or, good cause appearing therefor, may
20 continue, modify or extend the suspension of the license or
21 revoke the license.

22 C. The division is authorized to suspend the license
23 of a licensee under the age of eighteen without a hearing
24 whenever:

25 (1) the licensee withdraws from school as

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1 defined in the Compulsory School Attendance Law:

2 (2) the division receives from the certified
3 school administrator or the chief administrator of the
4 licensee's school, notification that the student has withdrawn;
5 and

6 (3) the division within five days of receipt of
7 the notice from the certified school administrator or chief
8 administrator sends notice by certified mail, return receipt
9 requested, to the licensee that his license shall be suspended."

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